

standards by which to judge whether or not Congress intended to preempt State or local authority—standards which are subjective and have not resulted in a consistent and predictable doctrine in resolving preemption questions.

If in Congress we want Federal law to prevail, we should be clear about that. If we want the States to have discretion to go beyond Federal requirements, we should be clear about that. If, for example, we set a floor in a Federal statute, but are silent on actions which meet but then go beyond the Federal requirement, State and local governments should be able to act as they deem appropriate. State and local governments should not have to wait to see what they can and cannot do. Our bill would allow tougher State and local laws given congressional silence.

Our legislation also requires the Congressional Research Service, at the end of each Congress, to compile a report on the number of statutory and judicially interpreted preemptions. This will constitute the first time such a complete report has been done, and the information will be valuable to the debate regarding the appropriate use of preemption to reach Federal goals.

I introduced this bill in the 102d Congress with Senator David Durenburger. A form of the bill was included in the unfunded mandates law we passed in the spring of last year. That provision, now law, requires that when a committee of the Senate or House reports a bill, the report accompanying the bill is required to contain an explicit statement of the extent to which the bill is intended to preempt any State, local or tribal law and if so, an explanation of the effect of such preemption. That provision of the unfunded mandates law is an attempt to get congressional committees to address the issue of preemption before legislation is reported to the floor of the House or Senate. In reviewing several bills that are now on the Senate Calendar awaiting Senate action, I was disappointed to find that none of the ones I reviewed met the requirements of this provision. We can and should do better.

This bill, unlike the provision in the unfunded mandates law where silence in the report leaves the issue unresolved, this bill establishes a principle for the courts to follow in determining a preemption case where the bill is silent on the matter. This bill tells the court that if the statement of intent to preempt is not in the legislation then the court is not authorized to read it into the statute—unless there is a direct conflict between Federal and State law. If legislation is silent, there is no preemption.

Earlier this year the Governmental Affairs Committee held a hearing on a bill entitled the "Tenth Amendment Enforcement Act of 1996." It contains a section on judicial construction which is virtually the same as that contained in this bill and the bill I introduced in the 102d Congress. The tenth amend-

ment bill, however, has other provisions that are troublesome. I am introducing my bill today in the hope that we can enact this provision into law, this year, and leave the more troublesome features of the Tenth Amendment Enforcement Act of 1996 for another day.

Mr. President, preemption clarification legislation has been endorsed by the National Conference of State Legislators, the Intergovernmental Affairs Committee of the Council of State Governments, the U.S. Conference of Mayors, and the Appellate Judges Conference of the American Bar Association.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1679

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preemption Clarification and Information Act of 1996".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States Constitution created a strong Federal system, reserving to the States all powers not expressly delegated to the Federal Government;

(2) on numerous occasions, the Congress has enacted statutes that explicitly preempt State and local government powers and describe the scope of the preemption;

(3) in addition to statutes that explicitly preempt State and local government powers, many other statutes that lack an explicit statement by Congress of its intent to preempt and a clear description of the scope of the preemption have been construed by the courts and Federal agencies to preempt State and local government powers; and

(4) without an explicit statement of Congress' intent to preempt State and local government powers and a clear description of the scope of preemption, preemptive statutes—

(A) provide too little guidance and leave too much discretion to Federal agencies which are required to promulgate and enforce regulations pursuant to statutes;

(B) create too great an uncertainty for State and local governments; and

(C) leave the presence or scope of preemption to be litigated and determined by the Federal judiciary, producing results sometimes contrary to or beyond the intent of Congress.

SEC. 3. PURPOSE.

The purposes of this Act are to—

(1) promote and preserve the integrity and effectiveness of the Federal system;

(2) set forth principles governing the interpretation of congressional intent regarding preemption of State and local government powers by Federal laws and regulations; and

(3) establish an information collection system designed to monitor the incidence of Federal statutory and regulatory preemption.

SEC. 4. DEFINITIONS.

As used in this Act, the term—

(1) "local government" means a county, city, town, borough, township, village, school district, special district, or other political subdivision of a State;

(2) "State" means a State of the United States and an agency or instrumentality of a

State, but does not include a local government of a State; and

(3) "State and local government powers" means powers reserved under the ninth and tenth amendments of the United States Constitution to States or delegated to local governments by States.

SEC. 5. RULE OF CONSTRUCTION.

No statute, or rule promulgated under such statute, shall preempt, in whole or in part, any State or local government law, ordinance, or regulation, unless the statute explicitly states that such preemption is intended or unless there is a direct conflict between such statute and a State or local law, ordinance, or regulation so the two cannot be reconciled or consistently stand together.

SEC. 6. ANNUAL REPORT ON STATUTORY PREEMPTION.

(a) REPORT.—Within 90 days after each Congress adjourns sine die, the Congressional Research Service shall prepare and make available to the public a report on the extent of Federal statutory preemption of State and local government powers enacted into law during the preceding Congress or adopted through judicial interpretation of Federal statutes.

(b) CONTENTS.—The report shall contain—

(1) a cumulative list of the Federal statutes preempting, in whole or in part, State and local government powers;

(2) a summary of Federal legislation enacted during the previous Congress preempting, in whole or in part, State and local government powers;

(3) an overview of recent court cases addressing Federal preemption issues; and

(4) other information the Director of the Congressional Research Service determines appropriate.

(c) TRANSMITTAL.—Copies of the report shall be sent to the President and the chairman of the appropriate committees in the Senate and House of Representatives.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect on January 1, 1997. The requirements of section 5 shall apply only to statutes enacted or final regulations which become effective on or after January 1, 1997.●

By Mr. SPECTER (for himself and Mrs. FEINSTEIN):

S. 1681. A bill to establish a commission to improve the policies and programs of the Federal Government for combating the proliferation of weapons of mass destruction, and for other purposes; to the Select Committee on Intelligence.

COMBATING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT OF 1996

Mr. SPECTER. Mr. President, it is well known that there is an enormous international threat posed by weapons of mass destruction.

Testimony which was recently heard by the Senate Intelligence Committee, which I chair, disclosed that some 25 nations have weapons of mass destruction including nuclear weapons, biological weapons, and chemical weapons.

In testimony offered by John Deutch in 1994, when he was Deputy Secretary of Defense, he pointed out that "If North Koreans build the Taepo Dong II missile, Alaska and parts of Hawaii would be potentially at risk." I think it is not well known that parts of the

United States are potentially at risk from long-range missiles.

We have seen the development of biological weapons by Saddam Hussein which was confirmed last August by his son-in-law following his defection. We see the building of chemical weapons by Qadhafi noted recently by Secretary of Defense Perry with his statement that we could not tolerate the completion of those weapons of mass destruction. We have seen China sell missiles to Pakistan. We have seen the tremendous tension building up on the subcontinent with both Pakistan and India engaging in a missile race.

In the United States, Mr. President, while we have noted the enormous problems on weapons of mass destruction, we have seen a governmental structure which is extraordinarily complicated and really unable to deal in a coordinated method with this tremendous problem.

This chart depicts the problems in the United States of the numerous agencies which have jurisdiction in one way or another over weapons of mass destruction. This chart contains boxes depicting 96 different entities which have authority of one sort or another over this field.

We have some authority vested in the National Security Council. We have some authority vested in the Department of Defense, some authority vested in the Department of State, some in the Department of Justice, some in the Department of Energy, some with the Director of Central Intelligence, others even with the Secretary of Health and Human Services, still further authority in the Secretary of the Treasury and authority in the Secretary of Commerce.

This is on its face an enormously unwieldy Federal bureaucracy, and that is our response to the problem of weapons of mass destruction. And as shown by this chart it is obviously a bureaucracy which cannot function efficiently.

In 1993, when I studied the Clinton health program, I asked an assistant to make a listing of all the agencies, boards and commissions, and my assistant made a chart instead which depicted an enormous bureaucracy, which was influential in helping to defeat that health care program. If a picture is worth 1,000 words, a chart may be worth 1,000 pictures, Mr. President, and I think that this chart shows the urgency of some reorganization of the Federal Government to deal with this enormous problem.

The study of the congressionally mandated Commission on Roles and Missions of the Armed Forces pointed out that "Despite the declared national emergency, there is no evidence that combating proliferation receives continuous high level attention." The study's conclusion is worth noting and emphasizing:

Mechanisms for effectively integrating the combating proliferation activities of all departments and agencies are lacking. Given the complexity of

the tasks involved, the need for marshaling resources from many agencies, and the necessarily protracted nature of these efforts, the failure to assign clear and empowered leadership has impeded the United States effort.

That conclusion is obvious in taking a look at the enormous complicated bureaucracy in the United States assigned to deal with this problem.

In looking at the solution, I have considered a number of alternatives. One option is the creation of "czar," such as the drug czar empowered to coordinate activities against drugs in United States. I have considered the creation of a high-level position on the National Security Council staff. I have considered the option of having a second Deputy Secretary of Defense. I have also considered the option of a new Assistant Secretary of Defense [ASD], like the ASD for special operations and low-intensity conflict created in the late 1980's as a result of legislation introduced by Senator COHEN and Senator NUNN.

I have decided instead that this matter ought to be studied by a high level special commission like the Aspin-Brown Commission, which recently filed a comprehensive report to reorganize the U.S. intelligence community. This is a matter which can be most effectively dealt with by experts on a commission. Rather than the introduction of legislation and the holding of hearings, the commission would have a much broader purview and that is the legislation which I am introducing today.

Mr. President, I ask unanimous consent that my legislation, together with a chart depicting this complicated bureaucracy which now seeks to deal with this problem of great national and international importance, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1681

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Combating Proliferation of Weapons of Mass Destruction Act of 1996".

TITLE I—ASSESSMENT OF PROGRAMS AND POLICIES FOR COMBATTING PROLIFERATION

SEC. 101. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission on Programs and Policies for Combating the Proliferation of Weapons of Mass Destruction (hereafter in this Act referred to as the "Commission").

(b) MEMBERSHIP.—The Commission shall be composed of 12 members of whom—

(1) 6 shall be appointed by the President;

(2) 3 shall be appointed by the Majority Leader of the Senate, in consultation with the Minority Leader of the Senate; and

(3) 3 shall be appointed by the Speaker of the House of Representatives, in consultation with the Minority Leader of the House of Representatives.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of

the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(f) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

(g) MEETINGS.—The Commission shall meet at the call of the Chairman.

SEC. 102. DUTIES OF COMMISSION.

(a) STUDY.—

(1) IN GENERAL.—The Commission shall carry out a thorough study of the organization, policies, and programs of the U.S. Government related to combatting the proliferation of weapons of mass destruction.

(2) SPECIFIC REQUIREMENTS.—In carrying out the study, the Commission shall—

(A) assess the effectiveness of the policies and programs of all departments and agencies of the Federal Government including the intelligence community meeting the national security interests of the United States with respect to the proliferation of such weapons; and

(B) assess the current structure and organization of all Federal agencies and the cooperation between elements of the intelligence community and the intelligence-gathering services of foreign governments in addressing issues relating to the proliferation of such weapons.

(b) RECOMMENDATIONS.—In conducting the study, the Commission shall develop recommendations on means of improving the effectiveness of the organization, policies, programs of the intelligence community, and the programs and policies of the other departments and agencies of the Federal Government, in meeting the national security interests of the United States with respect to the proliferation of weapons of mass destruction.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report containing a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SEC. 103. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 104. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government

shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 105. TERMINATION OF COMMISSION.

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 102(c).

SEC. 106. DEFINITION.

For purposes of this title, the term "intelligence community" shall have the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for the Commission for fiscal year 1996 such sums as may be necessary for the Commission to carry out its duties under this title.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until the termination of the Commission under section 105.

TITLE II—OTHER MATTERS

SEC. 201. REPORTS ON ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS.

(a) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Director of Central Intelligence shall submit to Congress a report on—

(1) the acquisition by foreign countries during the preceding 6 months of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) and advanced conventional munitions; and

(2) trends in the acquisition of such technology by such countries.

(b) FORM OF REPORTS.—The reports submitted under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

[The chart referred to by Senator SPECTER was not reproducible in the RECORD.]

ADDITIONAL COSPONSORS

S. 358

At the request of Mr. HEFLIN, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 358, a bill to amend the Internal Revenue Code of 1986 to provide for an excise tax exemption for certain emergency medical transportation by air ambulance.

S. 704

At the request of Mr. SIMON, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 704, a bill to establish the Gambling Impact Study Commission.

S. 968

At the request of Mr. MCCONNELL, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 968, a bill to require the Secretary of the Interior to prohibit the import, export, sale, purchase, and possession of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 990

At the request of Mr. WYDEN, his name was added as a cosponsor of S. 990, a bill to expand the availability of qualified organizations for frail elderly community projects (Program of All-inclusive Care for the Elderly (PACE)), to allow such organizations, following a trial period, to become eligible to be providers under applicable titles of the Social Security Act, and for other purposes.

S. 1028

At the request of Mrs. KASSEBAUM, the names of the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

S. 1150

At the request of Mr. SANTORUM, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 1150, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the Marshall plan and George Catlett Marshall.

S. 1491

At the request of Mr. GRAMS, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Missouri [Mr. BOND], the Senator from New Hampshire [Mr. SMITH], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 1491, a bill to reform antimicrobial pesticide registration, and for other purposes.

S. 1613

At the request of Mr. COCHRAN, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 1613, a bill to amend the National School Lunch Act to provide greater flexibility to schools to meet the Dietary Guidelines for Americans under the school lunch and school breakfast programs, and for other purposes.

S. 1624

At the request of Mr. HATCH, the names of the Senator from Ohio [Mr. GLENN] and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1624, a bill to reauthorize the Hate Crime Statistics Act, and for other purposes.

S. 1635

At the request of Mr. DOLE, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1635, a bill to establish a United States policy for the deployment of a national missile defense system, and for other purposes.

S. 1641

At the request of Mr. GRAMS, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1641, a bill to repeal the consent of Congress to the Northeast Interstate Dairy Compact, and for other purposes.

S. 1674

At the request of Mr. GRASSLEY, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1674, a bill to amend the Internal Revenue Code of 1986 to expand the applicability of the first-time farmer exception.

S. 1675

At the request of Mr. GRAMM, the names of the Senator from Arizona [Mr. KYL] and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 1675, a bill to provide for the nationwide tracking of convicted sexual predators, and for other purposes.

SENATE CONCURRENT RESOLUTION 42

At the request of Mrs. KASSEBAUM, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Concurrent Resolution 42, a concurrent resolution concerning the emancipation of the Iranian Baha'i community.

SENATE CONCURRENT RESOLUTION 50

At the request of Mr. DOLE, the name of the Senator from Massachusetts